

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 6, 2009 appellant, then a 55-year-old practical nurse, filed an occupational disease claim (Form CA-2) alleging numbness and tingling bilaterally in her arms due to patient care, which included transporting up to 45 pounds of equipment up stairs and over sand and rocks to patient homes.

On February 10, 2009 the Office requested additional factual and medical evidence, including a detailed description of the employment-related activities which contributed to appellant's alleged bilateral arm condition. It also requested a comprehensive medical report containing a diagnosis, description of her symptoms, the results of examinations and tests, and medical rationale explaining how her diagnosed condition was causally related to specific factors of her employment. The Office allotted appellant 30 days to submit additional evidence and respond to its inquiries.

In a January 29, 2009 medical report, Dr. Eve N. Hanna, Board-certified in occupational and emergency medicine, diagnosed "transient paresthesia UE's [upper extremities] – r/o [ruled out] muscle train, brachial plexus syndrome."

In a February 25, 2009 magnetic resonance imaging (MRI) scan report, Dr. Dexter G. Stallworth, a Board-certified radiologist, diagnosed multilevel disc disease at C4-5, C5-6 and C6-7.

In a March 6, 2009 memorandum, the employing establishment stated that appellant was required to carry a small document bag to transport paperwork and a rolling bag, the size of a laptop computer bag, to transport some basic nursing equipment, with a pull-out handle so she does not have to bend or carry the bag.

In a February 27, 2009 medical report, Dr. Samuel A. Joseph, a Board-certified orthopedic surgeon, diagnosed progressively worsening cervical spine pain, cervical radiculopathy and lumbar spine pain.

In a March 5, 2009 medical report, Mandy Morris, a physical therapist, diagnosed cervical pain and radiculopathy.

Appellant submitted an April 7, 2009 progress note by Dr. Joseph who diagnosed multilevel degenerative disease, multilevel cervical disc herniation and cervical radiculopathy. Dr. Joseph administered a C7-T1 cervical epidural injection that day and released appellant to work on April 8, 2009 with restrictions of no lifting over 30 pounds.

By decision dated May 4, 2009, the Office denied appellant's claim for compensation finding that she did not submit sufficient medical evidence to establish a firm diagnosis causally related to the implicated employment factors.

In a March 16, 2009 MRI scan report of appellant's lumbar spine, Dr. Robert S. Howard, a Board-certified radiologist, diagnosed "mineralization of the T12-L1 disc or possibly vacuum disc phenomenon" and noted early changes of degenerative facet arthrosis at the L4-5 level.

On November 19, 2009 appellant, through her attorney, requested reconsideration. In a November 10, 2009 report, Dr. Joseph stated that appellant sustained an employment-related injury on April 30, 2009 when a car door hit her head while she was loading her vehicle in the performance of duty. He indicated that he diagnosed appellant based on “a description of her daily work duties.” Appellant also submitted a September 21, 2009 narrative statement confirming the April 30, 2009 employment incident.

By decision dated February 12, 2010, the Office modified the May 4, 2009 decision. It denied appellant’s claim for compensation on the basis that the medical evidence submitted did not establish causal relationship, as opposed to lacking a firm medical diagnosis.

LEGAL PRECEDENT

An employee seeking benefits under the Act² has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an “employee of the United States” within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, and that an injury³ was sustained in the performance of duty. These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To establish that an injury was sustained in the performance of duty in a claim for an occupational disease claim, an employee must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁵

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on whether there is a causal relationship between the employee’s diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁶

² *Id.*

³ The Office’s regulations define an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

⁴ *O.W.*, Docket No. 09-2110 (issued April 22, 2010). See *Ellen L. Noble*, 55 ECAB 530 (2004).

⁵ *D.R.*, Docket No. 09-1723 (issued May 20, 2010). See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ *O.W.*, *supra* note 4.

ANALYSIS

The Board finds that appellant failed to meet her burden of proof to establish that federal employment factors caused or aggravated her bilateral arm condition. While appellant submitted a statement in which she identified the factors of employment that she believed caused the condition, in order to establish a claim that she sustained an employment-related injury, she must also submit rationalized medical evidence which explains how her bilateral arm condition was caused or aggravated by the implicated employment factors.⁷

In a February 27, 2009 medical report, Dr. Joseph diagnosed cervical radiculopathy. In an April 7, 2009 progress note, he further diagnosed multilevel degenerative disease and multilevel cervical disc herniation. In a November 10, 2009 statement, Dr. Joseph noted he diagnosed appellant based on a description of her daily work duties. His reports did not provide rationalized medical opinion explaining how appellant's bilateral arm condition was caused or aggravated by patient care in her federal employment. On appeal counsel for appellant contends the reports of Dr. Joseph are well rationalized. The Board finds, however, that the physician's opinion on causal relationship does not adequately explain how the accepted duties caused or contributed to her degenerative cervical disease. The evidence is not sufficient to establish the claim.

In a January 29, 2009 medical report, Dr. Hanna diagnosed transient paresthesia UE's. In a February 25, 2009 MRI scan report, Dr. Stallworth diagnosed multilevel disc disease at C4-5, C5-6 and C6-7. In a March 16, 2009 MRI scan report, Dr. Howard diagnosed mineralization of the T12-L1 disc, and noted the possibility of vacuum disc phenomenon and early changes of degenerative facet arthrosis at the L4-5 level. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁸ The medical reports of Drs. Hanna, Stallworth, and Howard are therefore insufficient to meet appellant's burden of proof to establish causal relationship between her bilateral arm condition and factors of her federal employment as none of them offer an opinion on causal relationship.

A March 5, 2009 medical report of Ms. Morris is of no probative value. The Board has held that physical therapists⁹ are not physicians under the Act.¹⁰

⁷ A.C., Docket No. 08-1453 (issued November 18, 2008); *Donald W. Wenzel*, 56 ECAB 390 (2005); *Leslie C. Moore*, 52 ECAB 132 (2000).

⁸ C.B., Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

⁹ *James Robinson, Jr.*, 53 ECAB 417 (2002); *Vickey C. Randall*, 51 ECAB 357 (2000); *R.C.*, Docket No. 09-2095 (issued August 4, 2010).

¹⁰ 5 U.S.C. § 8101(2). Section 8101(2) of the Act provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law."

As appellant has not submitted any rationalized medical evidence to support her allegation that she sustained an injury causally related to the indicated employment factors, she failed to meet her burden of proof to establish a claim.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained a bilateral arm condition in the performance of duty causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the February 12, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 15, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board